

# SENATE BILL 260

An Overview of BPH Requirements  
Under Senate Bill 260 (2013)

# **THIS TRAINING WILL PROVIDE:**

- **Review of the Cases that led to SB 260**
- **Explanation of each new or altered BPH requirement under SB 260**

# CASE LAW INFLUENCING SB 260

- **Graham v. Florida (USSC)**
- **Miller v. Alabama (USSC)**
- **People v. Caballero (Cal. Supreme Court)**
- **Moore v. Biter (9<sup>th</sup> Circuit Court)**

# Graham v. Florida (USSC)

- 16-year-old Graham (along with three youths) attempted to rob a barbeque restaurant. Court withheld adjudication of guilt and sentenced Graham to one year in jail followed by probation. Less than six months after release (few days before 18<sup>th</sup> birthday), Graham participated in a home invasion burglary with two adults.
- Court sentenced Graham to life for the burglary and 15 years for the robbery. Because Florida had abolished its parole system, a life sentence meant no possibility of release unless granted executive clemency.

# Graham v. Florida (USSC)

- USSC reversed sentence finding that “The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.”
- “State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.”

# Graham v. Florida (USSC)

- “It bears emphasis, however, that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, **it does not require the State to release that offender during his natural life.**”
- Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. **It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.**”

# Miller v. Alabama (USSC)

- Two 14 year olds from different crimes sentenced to mandatory life without parole (LWOP) sentences for being involved with murders (one as primary murderer, one as accomplice).
- The USSC reversed both sentences finding that the State cannot impose a mandatory LWOP sentence on a juvenile for any crime. Rather “a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.”
- Of particular relevance: USSC stated “**none of what [Graham] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific.**”

# People v. Caballero (Cal. Sup. Ct.)

- 16-year-old Caballero fired a gun at three individuals for gang purposes, striking but not killing one. Caballero was sentenced to 110 years to life for three counts attempted murder.
- Cal. Supreme Court reversed sentence holding that, based on *Graham & Miller*, “sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment.”



# Moore v. Biter (9<sup>th</sup> Circuit)

- 16-year-old Moore received a term-of-years sentence of 254 years and four months for numerous counts of forcible rape and other nonhomicide crimes.
- 9<sup>th</sup> Circuit reversed sentence holding that, even though the sentence was a determinate term of years, “Moore's sentence guarantees that he will die in prison . . . . [and] is irreconcilable with *Graham*'s mandate that a juvenile nonhomicide offender must be provided ‘some meaningful opportunity’ to reenter society.”

# REVIEW OF SENATE BILL 260

- Legislative Intent of SB 260
- Substantive Changes in the Law
- Clarifications in the Law

# SENATE BILL 260

## Legislative Intent

# SB 260: Legislative Intent

Section 1: Legislature defined SB 260's purpose and intent:

- “**The purpose of this act** is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity, in accordance with the decision of the California Supreme Court in *People v. Caballero* (2012) 55 Cal.4th 262 and the decisions of the United States Supreme Court in *Graham v. Florida* (2010) 560 U.S. 48, and *Miller v. Alabama* (2012) 183 L.Ed.2d 407.”
- “**It is the intent of the Legislature** to create a process by which growth and maturity of youthful offenders can be assessed and a meaningful opportunity for release established.”

# SENATE BILL 260: SUBSTANTIVE CHANGES

- Initial Consultations
- Parole Suitability Hearings for Youth Offenders

# Initial Consultations

- ◎ Prior law: required BPH to perform “documentation hearings” for lifer inmates during the third year of incarceration to review the inmate’s file and provide recommendations.
- ◎ SB 260:
  - > Renames existing meetings with lifers as consultations
  - > Adds consultations for all inmates eligible for parole suitability hearings as youth offenders under SB 260
  - > Adjusts the time line for when these occur to the 6<sup>th</sup> year prior to the inmate’s MEPD
  - > Clarifies the purpose of and requirements for an initial consultation
  - > Requires BPH to provide the inmate with written recommendations within 30 days

# Parole Suitability Hearings for Youth Offenders

- “Youth Offender Parole Hearings”
- Who Qualifies as a “Youth Offender”
  - > Controlling Offense defined
- Eligibility Time Frames
  - > Incarceration defined
- Caballero Factors
  - > Great Weight Requirement
  - > Forensic Assessment Division (FAD) Risk Assessments
  - > Input from Family, Friends, Community
- No Term Calculations
- Regulations

# **“Youth Offender Parole Hearings”**

- **Penal Code 3051(a) (1): “A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense.”**



# Who Qualifies as a “Youth Offender?”

- Generally, an offender qualifies as a “youth offender” for purposes of SB 260 if the controlling offense was committed prior to the offender reaching age 18.

# Controlling Offense defined

- ◉ **Newly enacted Penal Code 3051(a)(2)(B):**
  - > defines controlling offense as “the offense or enhancement for which any sentencing court imposed the longest term of imprisonment.”
- ◉ If an inmate has multiple determinate and/or indeterminate terms, their controlling offense will be determined by the length of the longest single term.
- ◉ **This includes crimes committed while incarcerated.**
- ◉ An indeterminate sentence will always be considered longer than a determinate sentence.

# Who Qualifies as a “Youth Offender?” - EXEMPTIONS

Penal Code 3051(h):

- ⦿ **This section shall not apply to cases for which:**
  - The inmate was sentenced pursuant to the three strikes law, or
  - The inmate was sentenced to life in prison without the possibility of parole (LWOP).
- ⦿ **This section shall not apply to an individual who commits an additional crime after age 18 for which:**
  - Malice aforethought is a necessary element of the crime (e.g., conspiracy to commit murder, attempted murder), or
  - The individual is sentenced to life in prison.

## How to Determine Whether an Inmate Qualifies for a Youth Offender Parole Hearing under PC § 3051:

**STEP ONE:** Review the complete criminal history, including any crimes committed while incarcerated, to determine the single crime or enhancement for which any court sentenced the inmate to the longest term. This is the “controlling offense” for the purposes of this statute.

**STEP TWO:** Did the inmate commit the controlling offense, as defined above, prior to reaching his or her 18<sup>th</sup> birthday?

YES

NO

**STEP THREE:** When sentenced for the controlling offense, did the inmate receive sentence enhancements under PC 1170.12, PC 667, or PC 667.61 for prior serious or violent felonies? (three-strike cases)

YES

NO

**STEP FOUR:** When sentenced for the controlling offense, was the inmate sentenced to life without the possibility of parole?

YES

YES

YES

NO

**STEP FIVE:** Did the inmate commit any additional crimes after reaching age 18, for which the inmate was convicted in a court of law? (*would likely be in prison*)

YES

**STEP SIX:** Was “malice aforethought” a necessary element of the crime committed after age 18?

NO

**STEP SEVEN:** Was the inmate sentenced to any term of life for the crime committed after age 18?

NO

NO

The inmate **DOES** qualify for a youth offender parole hearing under PC § 3051.

The inmate does **NOT** qualify for a Youth Offender Parole Hearing under PC § 3051.

# Eligibility Time Frames

- ◎ Newly enacted Penal Code 3051(b) establishes a maximum parole eligibility requirement for all qualifying youth offenders based on sentence length for controlling offense.
  - > **DSL Sentence only**: eligible at 15th year of incarceration (unless previously paroled)
  - > **Life Term < 25 years**: eligible at 20th year of incarceration (unless previously eligible)
  - > **Life Term of 25 years**: eligible at 25th year of incarceration (unless previously eligible)

# Incarceration defined

- ◎ **Newly enacted PC 3051(a)(2)(A):**  
“‘Incarceration’ means detention in a city or county jail, a local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.”

# Eligibility Time Frames: DSL Sentence Only

- The eligibility time frames establish the maximum time before which an offender serving a DSL sentence only is eligible to receive a suitability hearing.
- Once such an offender receives an initial hearing, subsequent hearings will be scheduled according to Marsy's law.
- DSL offenders are still eligible for release pursuant to their EPRD.

# Eligibility Time Frames:

## ISL Sentence < 25 years

- The eligibility time frames establish the maximum time before which an offender serving an ISL sentence is eligible to receive a suitability hearing.
- If the eligibility time frame is longer than the offender's MEPSD under existing law, the offender will begin the hearing cycle as provided for under existing law, except that the hearings will be conducted in accordance with the requirements for youth offenders.
- If the offender is currently in the hearing cycle under existing law, subsequent hearings will be scheduled according to Marsy's law.



# Eligibility Time Frames: ISL Sentence of 25 years

- The eligibility time frames establish the maximum time before which an offender serving an ISL sentence is eligible to receive a suitability hearing.
- If the eligibility time frame is longer than the offender's MEPSD under existing law, the offender will begin the hearing cycle as provided for under existing law, except that the hearings will be conducted in accordance with the requirements for youth offenders.
- If the offender is currently in the hearing cycle under existing law, subsequent hearings will be scheduled according to Marsy's law.

# Caballero Factors

- ◎ **Newly enacted Penal Code 4801(c):** “When a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, prior to attaining 18 years of age, **the board**, in reviewing a prisoner’s suitability for parole pursuant to Section 3041.5, **shall give great weight to the[:]**
  - > **diminished culpability of juveniles as compared to adults,**
  - > **the hallmark features of youth,**
  - > **and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.”**

# Great Weight Requirement

- ◉ **Newly enacted Penal Code 3051(d):**  
requires the Board to give great weight to the Caballero factors when determining suitability.
- ◉ **Newly enacted Penal Code 3051(g):**  
requires the Board to give great weight to the Caballero factors when determining denial length.

# FAD Risk Assessments

- ◎ **Newly enacted Penal Code 3051(f)(1):**
  - “In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and **shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual.**”

# Input from Family, Friends, Community, etc.

- ◎ **Newly enacted Penal Code 3051(f)(2):**
  - > “Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with **knowledge about the individual before the crime** or his or her **growth and maturity since the time of the crime** may submit statements for review by the board.”

# No Term Calculations

- ◎ **Newly enacted Cal. Penal Code 3046(c)** requires that, regardless of the order in which terms are served or any remaining terms to be served, once the inmate is found suitable, he or she is immediately eligible for parole, subject to BPH decision review, Governor's review, and Thompson terms.
- ◎ This provision applies to all hearings for qualified youth offenders, regardless of when or through what law the hearing process is initiated.

# Regulations

- ◎ **Amended Penal Code 3051(e):**
  - > “The board shall review and, as necessary, **revise existing regulations and adopt new regulations** regarding determinations of suitability made pursuant to this section, subdivision (c) of Section 4801, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.”

# SENATE BILL 260:

- Clarifications Provided by the Bill



# Clarifications in SB 260

## ◎ **Newly Enacted Penal Code 3051(f)(3):**

- “Nothing in this section is intended to alter the rights of victims at parole hearings.”

## ◎ **Newly Enacted Penal Code 3051(g):**

- Following a denial of parole, “[n]o subsequent youth offender parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.”

**ANY QUESTIONS?**